

## Internal Revenue Service

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Date:

September 10, 2008

## LEGEND

Taxpayer =

State =

Date =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Dear :

This responds to a letter dated , from Taxpayer's representative requesting permission, under § 301.9100-1(a) of the Procedure and Administration Regulations for an extension of time to make an election under § 263(c) of the Internal Revenue Code.

According to the submission, Taxpayer is a publicly owned corporation incorporated in State on Date. Taxpayer develops and sells oil and gas properties. During the years Year 1 through Year 3, Taxpayer was buying existing oil and gas properties and did not incur any intangible drilling costs (IDC). In Year 4, Taxpayer started purchasing property without existing wells and developing these properties. All these development costs were shown on the balance sheet under the account "Oil and Gas Leases" for Year 4 and Year 5. Believing the "Leases" account to be expenditures

for existing oil and gas wells as in previous years, Taxpayer's qualified tax professional did not deduct any IDC capitalized into the Leases account for Year 4 and Year 5. While preparing the Year 6 return in Year 7, Taxpayer's qualified tax professional noticed a substantial increase in the "Leases" account for Year 6 and discovered that the "Leases" account included IDC from Year 4, Year 5, and Year 6. Taxpayer was not aware that an election was required in order to deduct the IDC and relied on its qualified tax professional to make any elections relating to tax matters.

Section 263(c) provides an election, under regulations prescribed by the Secretary, to deduct intangible drilling and development costs. The regulations appear under § 1.612-4. Section 1.612-4(d) states that the election may be exercised by claiming IDC as a deduction on the taxpayer's return for the first taxable year in which the taxpayer pays or incurs such costs. No formal statement is necessary, but if the taxpayer fails to deduct the IDC, it is deemed to have elected to recover such costs through depletion.

Under § 301.9100-1(c), the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(d)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Section 301.9100-3(a). Section 301.9100-3(b) provides, in relevant part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this letter to make the election on an amended return to deduct IDC with the

appropriate service center. A copy of this letter should be attached to the amended return. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code and the Regulations thereunder. Specifically, no opinion is expressed concerning whether Taxpayer satisfies the requirements of § 263(c).

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

Curt G. Wilson  
Deputy Associate Chief Counsel  
(Passthroughs and Special Industries)

cc: